(1) D.B.CIVIL MISC.CONTEMPT PETITION NO.90/2006
(Anand Kumar Purohit v. K.C.Sancheti & ors)

(2) D.B.CIVIL MISC.CONTEMPT PETITION NO.146/2006
(Rajesh Sharma v. Mahendra Kumar Verma & ors)

(3) D.B.CIVIL MISC.CONTEMPT PETITION NO.169/2006
(Sumitra Garg v. M.R.Bhati & anr.)

(4) D.B.CIVIL REVIEW PETITION (DRJ) NO.3530/2005
(State of Rajasthan v. Roshanlal Jat and anr.)

24/7/2006

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Ranjeet Joshi)
Mr.Sanjeet Purohit)
Mr.Rakesh Arora) for petitioners.

Mr.O.P.Rathi, Dy.Govt. Advocate.
Mr.N.M.Lodha, Additional Advocate General.
Mr.K.S.Chouhan, for respondent contemner.
Mr.Bharat Meena, Secretary, PHED, Jaipur.
Mr.K.C.Sancheti, Chief Engineer, PHED (Rural), Jaipur.
Mr.Mali Ram, Chief Engineer, PHED, Jodhpur.
Mr.Piyush Pareek, Assistant Legal Remembrancer.
Mr.S.N.Purohit, Executive Engineer, PHED, Pokaran.
Mr.M.K.Verma, Superintending Engineer, PHED, Jalore.
Mr.Shankerlal Meghwal, Executive Engineer, PHED, Sirohi.
Mr.V.S.Garg, Assistant Engineer, PHED, Sub Division Abu Road.
Mr.M.R.Bhati, Chief Engineer, Bisalpur Project, Water Resources.

1. At the outset, we express our concern on increasing number of contempt petitions in the High Court, which is indicative of casual approach of the State Government and its

officials in complying with the orders of this Court. In the last week, we noticed three contempt petitions arising from non-compliance of the orders of the Division Bench of this Court by a single department i.e. Public Health & Engineering Department (in short, "the PHED"). If this is the way, the State Governmnt deals with the highest Court in the State, we are doubtful if the orders of inferior courts are respected by the State and its authorities. Thus, we have taken up the aforesaid four petitions in the presence of the concerned officers of the department.

(I) <u>D.B.CIVIL MISC.CONTEMPT PETITION NO.90/2006</u>:

2. This Court by its order dated 21.4.2005 directed the respondents to consider the case of the petitioner on the post of Typist/Clerk. It was further directed that he shall be entitled to regular pay scale with effect from the date from which he was absorbed as L.D.C./Typist by the department under the Rules of 1957. The Court further directed the Chief Engineer, PHED to ensure that the order of this Court is complied with. He was also required to file an affidavit before this Court to report the compliance. Three months' time was given to comply with the order.

3. Mr.Mali Ram, presently working as Chief Engineer, PHED, has filed an affidavit stating that a copy of the judgment was sent by the Officer Incharge to the Chief Engineer vide Communication dated 31.5.2005 and on 8.6.2005, the matter was referred to the Administrative Department for seeking further guidance as to whether the S.L.P. is required to be filed or not. Thereafter, on 15.6.2006, the Administrative Department sent to the file to Law Department for taking final decision about the filing of the S.L.P. before the Supreme Court. The S.L.P. was rejected by the order of the Apex Court dated 14.11.2005. A copy of the order was sent to the Superintending Engineer, Jaisalmer under Communication dated 6.1.2006. On 20.2.2006, the Chief Engineer asked the Officer Incharge to submit clear proposal with financial implementation. The matter was again sent to the Administrative Department vide notesheet dated 8.5.2006. The Administrative Department suggested for filing review petition which was not agreed by the Chief Engineer. The Administrative Department submitted file to the Finance Department in May, 2006 for financial approval but the Finance Department returned the file on 23.5.2006 with the averment that the appointments on the post of LDCs are made by the Administrative Department. Thereafter, the matter was referred to the D.O.P. However, on 14.6.2006, again the Administrative Department sent the file to the Finance Department for obtaining

concurrence for compliance. The Finance Department sent the matter back. On 16.6.2006, the Administrative Department sent the file to the Chief Engineer for providing information and so also on 3.7.2006, the Chief Engineer sent the file to Chief Engineer (Rural) for taking action at their end.

4. A reply in the name of Principal Secretary, Finance has been filed. The reply is not supported by an affidavit. It is averred that he received the order of this Court dated 10.7.2006 at about 5 PM. It is further averred that earlier in the day, the concerned file was shown to him for the first time and on perusal of the file, he dealt with the matter and made note, which is reproduced below:

> "The file has come to my notice for the first time today in the afternoon at about 2 P.M."

5. It is further stated that -

> "the order of this Court was clear, which was to consider the case of the applicant on the post of Typist/Clerk under the Rules of 1957; this ws to be done in 3 months from the date of order; Yet the department kept delaying complying with the order and finally referred it, almost as an excuse for the delay to the FD. It is not clear what concurrence of FD is required. Infact, no concurrence of FD is required, as the Department has to simply comply with orders of this Court to consider the applicant for the post of Typist/Clerk. Even if the reference to the FD is seen, at para 95/N, it is quite clear that there is no financial angle which has been

referred to FD for clearance. It may also be noted that file was marked directly to OSD, Finance (Rules), and not to Finance Secretary.

6. When the Court passed some harsh order, very next day, the order of this Court, which was not complied with for a period of complete one year, has been complied with and copy of the same has been produced before us. The Assistant Legal Remembrancer, who advised for filing the review application before the Supreme Court, is also present before us. It appears that to certain extent, he was also responsible for the ill-advice of filing review application. We put certain questions to him. He has not been able to speak out the relevant provisions either under the Code of Civil Procedure or the Supreme Court Rules. It is unfortunate that the State Government has to act upon the advice of such officers, who are not knowledgeable in law.

(II) <u>D.B.CIVIL MISC.CONTEMPT PETITION NO.146/2006</u>:

7. In the instant matter, the Labour Court vide Award dated 2.5.2002 directed to promote the petitioner on the post of Helper Gr.II. A further direction was given for regularization. He was also required to be given all consequential benefits. The department challenged the said order by way of filing a writ petition, which came to be dismissed by the order of the learned

Single Judge dated 13.4.2005. The department filed the Special Appeal, which was also dismissed by the order dated 12.7.2005. Thus, the department failed before the three Courts successively. As the order dated 12.7.2005 has not been complied with, petitioner has filed the instant contempt petition. The respondents have taken the two-fold technical plea, firstly that there is no specific direction for regularization of the services of the petitioner and secondly, it is stated that he has an alternate remedy under Section 29 of the Industrial Disputes Act. The plea taken is without substance. It is well settled that once an order of a court or tribunal is confirmed by the higher court, the order stands merged. There is specific order of the Labour Court for regularization and consequential benefits. The department itself chose to challenge the said order and on dismissal of the writ petition and then the Special Appeal by this Court, the order of the Labour Court has merged with the final order of this Court. The plea of the alternate remedy is not available. This Court has not only to ensure the compliance of its order alone but that of any court or tribunal in the State. It is unfortunate that the officers of the PHED under the garb of technical legal advice are avoiding the compliance of this Court's order. The course which they have adopted, is likely to put them in serious trouble sometimes. All the officers concerned are present in the court and they have stated that the order has

been complied with. They have placed on record a copy of the order dated 21.7.2006. Learned counsel for the petitioner says that the order has not been fully complied with. The respondents must ensure that the order of this Court is punctually and faithfully complied with within a period of two weeks. If the order is not complied with, it will be open for the petitioner to apply for revival of the instant contempt petition.

(III) <u>D.B.CIVIL MISC.CONTEMPT PETITION NO.169/2006</u>:

8. The relevant facts of the instant contempt petition are that deceased husband of the petitioner was a Junior Engineer in the department of PHED. As he did not join the duties on being transferred, an enquiry was instituted against him under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. During the pendency of the enquiry, he died. The State Government took a decision to drop the enquiry. Later-on, the department proceeded to recover an amount of Rs.1,90,666/- by way of deduction from the amount of gratuity and other retiral benefits. They have recovered the sum of Rs.1,90,666. Petitioner Sumitra Devi wife of late Naresh Chandra approached to this Court by way of filing a writ petition. The matter was taken to the Division Bench. This Court by order dated 16.3.2005 quashed the order of recovery of sum of

Rs.1,90,666/-. The correspondence shows that a decision was taken not to file S.L.P. against the said order, however the fact remains that the amount has not been paid to the petitioner. It is unfortunate that the officers of the department have acted inhumanly with the petitioner, who is none else but widow of one of their colleagues in the department, who died while in service. The officers of the department are present. They have stated that they have complied with the order.

(IV) D.B.CIVIL REVIEW PETITION (DRJ) NO.3530/2005:

9. By way of instant petition, the department seeks review of the order of this Court dated 9.12.2004. It is barred by limitation of 204 days. It is again a case in which a very casual approach has been adopted. The sanction for filing the review application has been given unmindful of the fact that the limitation for filing a review is 30 days. Learned counsel appearing for the department has no answer as to how the order dated 17.9.2004 has not yet been complied with.

10. At this stage, we make it clear that simply because at one stage, some officer has taken a decision to avail a remedy against the order of this Court or any other court by way of filing an appeal or review application, he does not get any jurisdiction

or authority to stay the operation of the order passed by this Court or tribunal. The department cannot take a plea that a decision has been taken to file an S.L.P. or review application. If a party is aggrieved of the order, he has a right to approach to the higher forum. But such a party is required to act promptly. The party cannot ignore the order passed by a court or tribunal and plead about difficulties in implementation at the time of contempt proceedings, which is a well settled law. Reference be given to the decision of the Apex Court in Mohd. Iqbal v. Abdul Majid reported in (1994) 4 SCC 34. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions of the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. If there is any difficulty in complying with the order, the party is supposed to have applied to the court for extension of time. But in any case, no party can sit over the file with the immunity and take a plea of "departmental procedure".

11. We make it clear to one and all that they should not be under the impression that simply by tendering apology in a contempt petition, they will be off the hook. Such adventurism

may cost heavy to them sometimes. The Apex Court in B.M.Bhattacharjee v. Russel Estate Corporation reported in AIR 1993 SC 1632 observed that -

> "all of the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the courts have to be obeyed implicitly and that orders of the Apex Court – for that matter any court – should not be trifled with."

12. Any country or society professing the rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty.

13. We simply remind the recent decision of the Apex Court in T.N.Godavarman Thirumulpad v. Ashok Khot reported in (2006) 5 SCC 1. In the said case, the contempt proceedings were against Shri Ashok Khot, Principal Secretary, Department of Forests, Govt. of Maharashtra and Swarup Singh Naik, Minister in charge of the Department of Forests at the relevant point of time. In the said case, the Apex Court rejected the plea of apology and sentenced to one month's imprisonment. The Court observed:

> "Apology is not a weapon of defence to purge the guilty of their offence, nor it is intended to operate as universal panacea."

14. Having noticed the trend among the officers to take the order of this Court slightly, the Court observed -

> "In this case, the contemnors deserve severe punishment. This will set an example for those who have a propensity for disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month's simple imprisonment in each case would meet the ends of justice."

15. It is a known fact that the Hon'ble Minister and the senior Officer had to undergo one month's sentence.

16. Considering all the facts and circumstances of the case , more particularly keeping in view the affidavit filed by Shri Anil Vaishya, Chief Secretary of the State of Rajasthan assuring that a mechanism will be evolved that in future, the orders of this Court are complied with. We are discharging the notices of contempt in all the cases referred to above. However, all the contempt petitions are disposed-of imposing a cost of Rs.10,000/-each to be payable by the respective Head of Department. This amount shall be deposited with the Registrar Administration of this Court within a period of one month. Out of the deposited amount, the said amount shall be paid to each of the petitioners. It will be open for the respective department to initiate the enquiry and recover the amount from an individual or

group of persons, who are found guilty or slack in not complying with the orders of this Court. The Review Application is dismissed as not pressed. In case of non-compliance, it will be open for the party concerned for revival of the Contempt Petition.

(R.P.VYAS), J. **(N.N.MATHUR), J.**

RANKAWAT JK, PS